Supreme Court, U.S.
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No.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1986

MICHAEL R. AND IRENE S. ATRAQCHI

Petitioners,

v.

FOUR UNKNOWN NAMED AGENTS OF THE
FEDERAL BUREAU OF INVESTIGATION, et al.

Respondents,

ON WRIT OF CERTIORARI TO THE

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

BRIEF FOR PETITIONER

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EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

QUESTIONS PRESENTED

1. Whether the plaintiffs' constitutional and statutory rights have been violated in the dismissal of plaintiffs' complaint for failure to state a claim arising from allegedly illegal wiretapping and dissemination of certain information gained from allegedly illegal wiretapping by the Federal Bureau of Investigation, local authorities, and certain other individuals.

2. Whether there is a conflict between the decision of the United States Court of Appeals for the Ninth Circuit and the United States Court of Appeals for the Fifth Circuit on the case of Wright v. Florida, 495 F2d 1086, (Circuit 5, 1974) and the decision rendered in plaintiffs' case involving the same matter of wiretapping.

3. Whether 18 USCA 2520 should have been invoked by the lower court and the court of appeals in plaintiffs' federal civil suit alleging plaintiffs had sustained direct injury and were in imminent danger of sustaining direct injury.

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MICHAEL R. AND IRENE S. ATRASCHI

Petitioners,

v.

FOUR UNKNOWN NAMED AGENTS OF THE FEDERAL BUREAU OF INVESTIGATION, MUMTAZ FARGO, ROBERT MCRAE, EUGENE WIESNER, HAROLD HANSER, RICHARD SHAFFER, MOUNTAIN BELL TELEPHONE CO., JANE DOE, AND JOHN DOE (1-500)

Respondents,

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

BRIEF FOR PETITIONER

OPINIONS BELOW

The opinion of the district court (32) dated May 3, 1985 reaffirmed its initial memorandum and order dismissing the complaint (33). The opinion of the court of appeals affirmed the judgment (44) dated May 15, 1986 on case CA 85-3914. Plaintiffs' correction dated May 30, 1986 to the court of appeals requested rehearing since wrong statutes were reported in appellants' opening brief. Court of appeals' order dated June 16, 1986 denied rehearing for correction on wrong statutes used.

JURISDICTION

The judgment of the court of appeals was entered on May 15, 1986. Court of

appeals' order dated June 16, 1986 denied rehearing. A petition for writ of certiorari was filed on August 1, 1986. The jurisdiction of this court is invoked under 18 USCA 2520; 28 USCA 1343 (3) (4); USCA Const. Amend 4; 28 USCS 1331; 42 USC 1983; and 42 USC 1985 (1) (2) (3) (4).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

18 USCA 2520:

Under statute giving district court original jurisdiction of any civil action to recover damages under any act of Congress providing for protection of civil rights, district court had jurisdiction to hear claims of subjects of allegedly illegal wiretaps based on statute authorizing a civil action by any person whose wire or oral communications is illegally intercepted, disclosed, or used.

The Fourth Amendment:

" The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated....."
28 USCS 1331 (a)

" The district courts shall have original jurisdiction of all civil actions wherein the matter in controversy exceeds the sum or value of $10,000, exclusive of interest and costs, and arises under the Constitution, laws, or treaties of the United States."

28 USCA 1343 (3)

" The district courts shall have original jurisdiction of any civil action to redress deprivation under color of state law of any rights secured by the Constitution, and district court had jurisdiction to award damages against state and state and local officials for violation of Fourth

Amendment rights resulting from dissemination of information gained from allegedly illegal wiretaps.

28 USCA 1343 (4), Amend. 4

Right to be free from unauthorized or improperly authorized wiretapping, being one aspect of right to be free from unreasonable searches and seizures, is a 'civil right' within statute giving district court original jurisdiction of any civil action to recover damages under any act of Congress providing for protection of civil rights.

U.S. Constitution 1st Amendment

Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof....

U.S. Constitution 14th Amendment

Section 1 - No United States citizen should be deprived of life, liberty or property.....

Right to equal protection and due process of the law.....

42 USC 1983

Every person who, under color of any statute, ordinance, regulation, custom or usage, of any State or Territory, subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

42 USC 1985 (1) (2) (3) (4)

(See appendix)

STATEMENT OF THE CASE

On February 1, 1980 at 7:00 PM plaintiff, Mike R. Atraqchi, was conversing long distance over his private home telephone with a party by the name of M.D. Mohammed who was alone in his dormitory room and on a private telephone in Missoula, Montana.

That conversation was intercepted and transmitted to a third party by the name of Kadri by the Federal Bureau of Investigation's agent (name unknown) from the Billings Office. The conversation was relayed back to Mohammed the next day at the University.

As a result of the transmitted conver-

sation, M.D. Mohammed was beaten by Kadri in February of 1981, and Atraqchi was threatened with death in August of 1980 by Kadri in Missoula, Montana at the Student Union.

The incidents were reported approximately in February of 1981 to the Missoula Montana County authorities, but evidence was suppressed. A peace bond was drawn between Kadri and Mohammed but not signed.

Immediately afterward harassment became very severe. Atraqchi received threats from Sheriff Richard Schaffer in Billings. On one occasion Shaffer threatened to do physical harm to Atraqchi (break his leg) if he should initiate a Court action against officials of Yellowstone County for illegal wiretapping.

Previously, and before the above incidents, the Atraqchis were harassed by de-

fendants Wiesner, Fargo, and McRae (associates and instructors at Eastern Montana College) and were prevented from continuing their education at Eastern Montana College. Incidents of these harassments for a period of not less than 9 years were reported against Fargo, McRae, and Wiesner to the Billings Police Detective Division. Certain investigations by that Division were conducted. The content of these investigations were never revealed to the plaintiffs until the Atraqchis were summoned to the Federal Bureau of Investigation's office in Billings, Montana.

At 1:00 PM on October 19, 1979 the plaintiffs, Atraqchis, were summoned illegally, unethically, and without a warrant or a court order to the Federal Bureau of Investigation's office in Billings as a result of consultation between the Billings, Montana Police Department (Detective Div-

ision) and the Billings Federal Bureau of Investigation's office in which the plaintiffs were uninformed and unaware of this setup.

The plaintiffs were insulted and interrogated for approximately 3 hours. Agent Teal threatened plaintiffs' lives should the Atraqchis proceed with a civil suit against the defendants. Atraqchi was ordered by Agent Teal to see Wiesner, psychologist; and Irene Atraqchi was told to divorce her husband, plaintiff Mike Atraqchi. The Atraqchis were asserted by Agent Teal that he will see to it that no attorney in the United States will take their case. Plaintiffs learned later that Teal in August of 1980 was indicted by a grand jury in a five-count criminal indictment. All of the above took place at the Federal Bureau of Investigation's Billings office in the presence of three unknown agents.

Plaintiffs have learned that their daughter, Deborah Ann Atraqchi, on or about the spring of 1981 had become consentant of her telephone being tapped while she was a student at Montana State University, Bozeman, Montana after Deborah had told her parents (plaintiffs) in tears about nine weeks earlier that she had been isolated at that campus. In additional plaintiffs' entire two families had consented to have their telephones tapped about this time; consequently, they became a part of this conspiracy by force applied by the Federal Bureau of Investigation and the local law officials.

Through the consent of the telephone tapping by the plaintiffs' families, a tremendous amount of certain information was and is being transmitted to the plainriffs' families locally, in other states, and overseas by Dr. Awatif B. Dorsey (half

cousin to plaintiff, Mike Atraqchi), psychiatrist, of Cincinnati, Ohio. The plaintiffs' families became severely controlled, and the plaintiffs were monitored without their knowledge. This procedure for such a long period of time caused plaintiffs to become isolated and to lose all of their freedom.

It is important to mention that defendant, Mumtaz Fargo, not only listened to the plaintiffs' telephone conversations, but also the conversations of the plaintiffs in their home by turning the telephone equipment on with the help of the Telephone Company, the Federal Bureau of Investigation, and local authorities for a period of at least 14 years. Fargo listened to entire conversations on a daily routine. Fargo became obsessed with the plaintiffs' lives and was able to track down the Atraqchis wherever and whenever

they left their home for business or pleasure. He followed, harassed, and interferred with their business on the street and everywhere that they went. In approximately 1975 he ordered Mike Atraqchi to leave Billings and move elsewhere while Atraqchi was at the EMC campus waiting for his wife (student). He went to Bozeman, Montana to meet with plaintiffs' daughter, Deborah Atraqchi, for a period of about two years after she consented to her telephone being tapped, without informing her parents of these meetings.

While Atraqchi was agent for New York Life Insurance Co. in about 1967, he was ordered by the manager of New York Life Insurance Co. to meet with psychologist, Wiesner, who was also employed by Yellowstone County. Wiesner ordered Atraqchi upon meeting him at his EMC campus office to be counseled so Atraqchi could be incor-

porated into this conspiracy. Atraqchi refused.

About 1977, defendant, McRae then acting Vice President of Eastern Montana College began harassing the Atraqchis by calling them over the telephone and threatening Atraqchi with his livelihood if he should not conform and join his religious group. Atraqchi did not join.

On or about February 8th, 1983 at about 10:30 AM, a member of the Federal Bureau of Investigation, Billings, Montana office without a warrant or court order came to the Atraqchis' residence demanding to talk to Mike Atraqchi and M.D. Mohammed in a belligerent way. He demanded with a threat that Atraqchi come to the office of the FBI that afternoon.

The plaintiff, Atraqchi, responded to the Federal Bureau of Investigation's agents' demand and met with this Agent in

the Billings office at approximately 1:30 PM. This Agent threatened Atraqchi that that one day he will show him what Christianity is all about and demanded that M.D. Mohammed leave the residence of the Atraqchi's immediately and not to contact Atraqchi again. Mohammed is a foreign student who was enrolled at Eastern Montana College the winter quarter of 1983 and was sponsered by the Atraqchis.

A few days later on about February 10th 1983 plaintiffs' daughter, Brenda, a dyslexic (slow learner) who was enrolled at Eastern Montana College was kidnapped from Eastern Montana College while she was a freshman. Upon reporting the incident on about February 11, 1983 (filing missing persons report) to the Sheriffs' Department in Billings, Montana; the County Attorney Harold Hanser in front of the plaintiffs intervened and suppressed any information

to be given to the plaintiffs by the deputy (name unknown).

Later plaintiffs learned from their daughter that she was married to an American native. The spouse and marriage of Atraqchi's daughter was arranged by a Billings Federal Bureau of Investigation's agent, Edward Traeger, who was in charge of the American Indian reservation.

About the fall of 1982 Albert Martello of the State Insurance Department, Helena, Montana informed the Atraqchi's upon visiting Martello that certain individuals (name unknown) were tapping the Atraqchi's telephone. As a consequence, Atraqchi lost his job as an insurance agent and was systematically fired from all the insurance companies that he represented. Now Atraqchi is completely without a job for a period of 2½ years and unable to sustain himself economically and unable to secure work in his

field despite the fact that the plaintiff is a highly sucessful and a very well motivated individual.

Before and after the discovery of the telephone tapping, the plaintiffs were and still are unable to obtain legal representation, despite the fact that plaintiffs contacted many attorneys including the ACLU. Plaintiffs have incurred a tremendous amount of expense. Many times plaintiffs were charged a retainer fee and then refused counsel. The attorneys whom plaintiffs contacted are afraid for their lives from the defendants.

As reported to the District court and the Court of Appeals, plaintiffs have left the community, and their property many times to settle in other places (in the United States and overseas) however, the FBI had plaintiffs severely harassed and under extreme surveillance to the

point that they could not obtain a job or relocate; so plaintiffs would return to their house to live again unable to get a job, education, and unable to progress.

Members and co-conspirators of the community have been calling a certain telephone number to report information about the plaintiffs, and also receive information and instructions on how to treat the plaintiffs and what to tell the plaintiffs on a daily basis.

At this time the conspiracy is in its second stage which is to destroy the plaintiffs economically and to take their property as well as to destroy their two daughters and family members economically after they have destroyed them socially which was the first stage. The defendants have done damage to plaintiffs' property, controlled their rental property income which is less than plaintiffs need to pay

property taxes, insurance, and maintain property. Plaintiffs have had to borrow $13,000 to pay the property taxes in 1986. Through defendant, Hanser, the tenants were harassing and threatening to frame plaintiffs; thus trying to force the plaintiffs to sell their property at a low price. At the present time there is a coverup to hide the actual damages that have been done by the defendants while the defendants are continuing to damage plaintiffs personally and economically. Defendants have sent strangers to threaten plaintiffs that if they file the suit, harm will be done to their daughters, parents, oldest brother, oldest sister, youngest niece and nephew. Defendants are controlling whether a damage claim will be paid on the roof of plaintiffs property and use the claim as a bargaining point, so plaintiffs will drop the suit in exchange for a minimum settlement.

The claim has been pending for 1½ years by the order of the defendants.

Atraqchis, acting pro se (not by choice), brought a civil suit for damages against the unknown agents of the Federal Bureau of Investigation in the United States District Court for the District of Montana alleging violation of their constitutional and statutory rights under the Fourth Amendment and 18 USCA 2520. The complaint sought damages for loss of: job, daughters' relationship, family relationship, education, reputation, property income, and all business opportunities, in additional for humiliation, embarrassment, and mental suffering in the amount of $50,000 from each of the defendants and punitive damages of $2,000,000 (2). After a hearing on injunction, the district court dismissed the case for failure of the complaint to state a claim. (33). The

judgement by the United States Court of Appeals for the Ninth Circuit affirmed the decision of the lower court (44).

SUMMARY OF ARGUMENT

Potential victims of unlawful surveillance are encouraged to file a federal civil suit under Title III, 18 USCA 2520 and 28 USCA 1343 (4); and plaintiffs have option to file a federal civil suit for protection of plaintiffs (citizens against government overreaching when agents acted in unconstitutional manner outside the scope of authority). The law is on the side of the victim. Federal civil suits are the only way to check the abusing of authority by individuals of the law enforcement agencies.

Under statute giving district court original jurisdiction of any civil action to recover damages under any act of Congress for protection of civil rights, dis-

trict court had jurisdiction to hear claims of subject of allegedly illegal wiretaps based on statute authorizing a civil action by any person whose wire or oral communication is illegally intercepted, disclosed, or used. 18 USCA 2520, 28 USCA 1343 (4).

Law in general has never been that plaintiff's action must fail because when he begins his suit, he does not know enough about his cause of action to establish it forthwith by competent evidence, nor, having pleaded cause of action, was plaintiff ordinarily denied right to amend by application or by adding specific instances, coming within ambit of cause of action which he may have set forth in his complaint.

In any conspiracy throughout the history, the one conspired against is the last one to know. Thus, how could the plaintiffs amend their complaint without the instrument of discovery. Where validity of

defense is not determined conclusively by pleadings, plaintiffs should have opportunity to prove their case. Claims of legal substance should not be forfeited because of failure to state them with technical precision when a claim alleges non frivolous matter which is true and entitles plaintiffs to relief.

Furthermore, the right to be free from unauthorized or improperly authorized wiretapping being one aspect of right to be free from unreasonable search and seizure is a 'civil right' within statute giving district court original jurisdiction of any civil action to recover damages under any act of Congress providing for protection of civil rights. USCA Const. Amend 4; 28 USCA 1343 (4).

Specifically, the plaintiffs alleged that they had sustained direct injury and were in imminent danger of sustaining direct injury because the government had

conducted excessive surveillance involving physical violence, threats, illegal search and seizure, illegal electronical surveillance, and the denial of the right to counsel, should have standing to invoke the remedy provision of 18 USCA 2520.

In a similar case Wright v Florida, the Court of Appeals has remanded the judgment of the lower court and invoked 18 USCA 2520 as a remedy when in the case at hand the lower court and the Court of Appeals failed to recognize and invoke 18 USCA 2520. In Philadelphia Resistance v Mitchell, and Gelbard v United States involving the same matter, the court invoked 18 USCA 2520. Therefore, plaintiffs' right under federal rules of civil procedure number 1 have been violated to secure the just, speedy, and inexpensive determination of every action.

ARGUMENT

I. Violation of statutory and consti-

tutional rights authorizing a civil action by any person whose wire or oral communication is illegally intercepted, disclosed, or used without a probable cause and the right to be free from unreasonable searches and seizures gives rise to a federal civil suit.

A. Violation of statute 18 USCS 2520

The complaint alleges a specific conversation was illegally intercepted, transmitted, and used. See Wright v Florida, 495 F2d 1086 (Circuit 5, 1974). Disclosure of conversation resulted in assault and battery to M.D. Mohammed and the threat of death on life of plaintiff, Mike R. Atraqchi (see paragraph 18, page 7 of complaint).

Jurisdiction for statute 18 USCS 2520 (Title III - Act of Congress) has been properly invoked under 28 USCA 1343 (4).

1. Dismissal for failure to state a claim in a case involving a violation of

an Act of Congress (Title III).

A complaint should not be dismissed for failure to state a claim unless it appears beyond doubt.that plaintiffs cannot prove no set of facts in support of their complaint which would entitle him to relief. Cruz v. Beto, 31 L ED 2d (1971); Marshall v. Brierley, 461 F2d 929 (1972; Kingwood Oil Co. v. Bell, 204 F2d 8 (Circuit 7, 1953); Heeser v. Philadelphia Nat. League Club, 84 F Supp 947, (1949); Pessin v. Keenelan Asso., 45 FRD 10 (1968). Motion to dismiss is viewed with disfavor in federal court. Rennie & Laughlin, Inc. v. Chrysler Corp., 242 F2d 208 (Circuit 9, 1957). Complaints and other pleadings drawn by laymen appearing in pro se as in Dioguardi v Durning, 139 F2d 744, (1944) are closely scrutinized to determine whether a claim has been set forth and dismissal carefully guarded so that an injustice is not done. Action may be

brought against government agents under 18 USCS 2520. Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 456 F2d 1339 (Circuit 2, 1972); Bethea v. Reid, 92 S. Ct 747 (Circuit 3, 1971); and Balistrieri v. Holtzman 55 FRD 470 (DC Wisc., 1972). The court held in US v. Cox, 462 F2d 1293 (Circuit 8, 1972) that certain law enforcement officers had intercepted conversations outside the scope of their wiretap warrant. The court indicating that persons whose conversations were intercepted could have a civil suit against the officers under 18 USCS 2520 alleging that they had exceeded their authority.

2. Statute of Limitations

Harassment has not stopped and the illegal surveillance continues until the present, and furthance of criminal conspiracy is still in motion. Under 18 USCS 2520 provides no statute of limitations

Awbrey v Great Atlantic & Pacific Tea Co. 505 F Supp 604 (ND Ga, 1980). The plaintiffs became aware of the FBI involvement in this case in November, 1983 while plaintiffs were in Seattle, Washington searching for a legal counsel to represent them in this case. Plaintiffs were harassed, intimidated, insulted, followed, and prevented from obtaining legal advice and counsel by instructions of the defendants. They became aware of the electronical surveillance to their car and their apartment at that time. Therefore, according with statute of limitations the cause of action did not arise until the subject becomes aware of the surveillance and that the statute of limitations does not commence running until that time. Alioto v. Holtzman, 54 FRD 602 (DC Wis., 1972); Balistrieri v. Holtzman 55 FRD 470 (DC Wis. 1972). In the next case since plaintiffs could not have discovered that their

telephone was wiretapped through exercise of due diligence before they did, suit for civil damages was not barred by statute of limitations even though it was filed some 7 years after wiretapping took place. Smith v. Nixon, 606 F2d 1183 (app DC, 1979) In Brown v. American Broadcasting Co., 704 F2d 1296 (Circuit 4, 1983) the cause of action under 18 USCS 2520 for illegal surveillance accrues when plaintiff discovers that his communications have been intercepted.

3. Naming of defendants

Despite the fact that there has been certain individuals' names mentioned in the complaint, but were not named defendant is not a violation to necessitate dismissal of the action. They are part of conspiracy induced by coercion; therefore, they are victims, but they explain the connection of the conspiracy.

Litigant is not required to sue all

those whom he charges with wrongful conduct and basic question in determining whether complaint may be dismissed on allegation of failure to join indispensable party is whether or not justice can be done and court's decree made effective without presence of such parties. General Transistor Corp. v. Prawdzik, 21 FRD 1 (DC NY, 1957).

4. Should plaintiffs' complaint have been taken as true?

Plaintiffs are usually entitled to have their allegations of complaint taken as true. Kugler v Helfant, 421 US 117 (1975); Mastandrea Gurrentz International Corp., 65 FRD 52 (DC Pa, 1974); Whitten v. American Mut. Liability Ins. Co. 468 F Supp 470 (DC SC, 1977).

Claims of legal substance should not be forfeited because of failure to state them with technical precision when a claim alleges nonfrivolous matter which is true and

entitles plaintiffs to relief. Coleman v. Peyton, 340 F2d 603 (Circuit 4, 1965).

5. Amending of complaint by pro se litigant.

Whether a pro se litigant has the ability to amend his complaint as easily as the Court of Appeals mentioned especially since plaintiffs were under severe harassment, isolated, and intimidated. They were deceived and desisted by all the attorneys that they have contacted especially on the preparation of the opening brief to the Court of Appeals. The plaintiff does not have command of the English language neither the knowledge and education to proceed with this action to the Supreme Court. Plaintiffs were deprived from every economical opportunity for the last 3 years by the defendants and their co-conspirators and are constantly being threatened with death and are receiving threats on their families.

6. Is the silence of the defendants to answer the plaintiffs' complaint tantamount to a force of guilt?

Defendants have not answered the plaintiffs' complaint and have chosen to ignore the responsive reply of plaintiffs in regard to the Statute 18 USCS 2520 and the subject of wiretapping. Bivens v. Six Unknown Agents of Federal Bureau Narcotics, 456 F2d 1339 (Circuit 2, 1972).

7. Should the question arise whether plaintiffs' complaint is vague and rambling?

Approximately twenty years of illegal telephone tapping is not an easy task to summerize especially when plaintiffs are pro se and unable to obtain counsel due to the severity of the case.

Circumstances when taken together can generate a most compelling inference and be sufficient to constitute conclusive proof which is usually true in conspiracy cases.

The Supreme Court of the United States first recognized the validity of "collective impact' in the Slavers (Reindeer) 69 US 383 (1864.)

8. The question might arise whether plaintiffs could amend their complaint without a discovery period in a conspiracy case of illegal wiretapping.

Where validity of defense is not determined conclusively by pleadings, plaintiff should have the opportunity to prove his case. Wright v Florida Plaintiffs should have been allowed a discovery period and amend their complaint. Abramson v. Mitchell, 459 F2d 955 (Circuit 8, 1972).

9. Whether allegations of complaint are unsupported by facts insufficient to constitute a cause of action.

The allegations in the complaint are supported by facts. The Findings of Fact and the exhibits submitted to the District Court at the Hearing for a preliminary

injunction are facts showing injury which constitutes a cause of action.

The first cause of action will be implied under 18 USCS 2520 with jurisdiction based upon federal statute 28 USCS 1343 (4). The second cause of action will be implied under Title III (Act of Congress) where federal right is being asserted that provides for equal rights of citizens 28 1343 (3).

10. The question may arise about national security.

Should the United States government (FBI) claim immunity for national security, the United States government is required to answer plaintiffs' complaint under Chapter 119 (pre-emts the field of interceptions of wire communications). United States v. Ahmad, 499 F2d 851 (Circuit 3, Pa., 1974).

11. Judicial Enforcement of Statutory Rights enacted by Congress.

The federal courts have traditionally

enforced statutory rights with a remedy for victims of illegal wiretapping to file a federal civil suit. Wright v. Florida 495 F2d 1086 (Circuit 5, 1974). Philadelphia Resistance v. Mitchell, 58 FRD 139 (DC Pa, 1972).

12. Whether plaintiffs 14th amendment rights were violated when plaintiffs tried to obtain equal justice?

The District Court and the Court of Appeals denied a counsel at the expense of the plaintiffs to insure that plaintiffs will get adequate representation without coercion, threats, and intimidation from the FBI Agents and the Defendants. Counsel was appointed to amend the complaint as was done in the wiretapping case of Wright v. Florida, 495 F2d 1086 (Circuit 5, 1974).

It is important to note to the court that the plaintiffs were distracted, abused, and cheated when submitting the

opening brief to the United States Court of Appeals for the Ninth Circuit by the Federal Bureau of Investigation (agent unknown). A man presented himself as an attorney (by the name of Bruce Choyce) whom the plaintiffs trusted. This man offered to help plaintiffs with the opening brief, and the plaintiffs accepted. This happened at Berkley Law Library on July 9, 1986. As a result the opening brief was misleading and contained many errors intentionally invoked by the FBI to mislead the Court of Appeals. The correct statutes were omitted in the opening brief which the plaintiffs did not discover until the Court of Appeals rendered judgment.

The content of the opening brief steered the attention of the Court of Appeals in a different direction which resulted in the dismissal of the case which has delayed the plaintiffs another year and defendants are continuing to do more irreparable damage to

the plaintiffs and their family.

B. Violation of U.S. Constitution Amendment 4.

The complaint alleges (paragraph 16, page 6) unreasonable search and seizure by the Federal Bureau of Investigation agents whom detained plaintiffs on October 19, 1979 and again detained plaintiff, Mike R. Atraqchi about February 8, 1983 without a warrant or court order. Bivens v Six Unknown Named Agents of the Federal Bureau of Narcotics, 91 S. Ct. 1999 (1971).

A cause of action accrued when plaintiffs' Fourth Amendment rights were violated.

Jurisdiction for the Fourth Amendment violations resulting in injury lies in federal statute 28 USCS 1331.

1. The defense of Governmental privilege does not extend to Federal Officers clearly violating constitutional rights and acting beyond the scope of

authority.

The Fourth Amendment operates as limitation upon the exercise of federal power. Norton v. US, 581 F2d 390 (Circuit 4, 1978); Ricca v US, 488 F Supp 1317 (Circuit 2, 1980); Rodriguez v Ritchey, 539 F2d 394 (Circuit 5, 1976) Beard v. Robinson, 563 F2d (Circuit 7, 1977); Morales v. Hamilton 391 F Supp 85 (Circuit 9, 1975; Vasquez v. Reno, 461 F Supp 1098 (Circuit 9, 1978); GM Leasing Corp. v US 560 F2d 1011 (Circuit 10, 1977); and Zweibon v. Mitchell, 516 F2d 594 (Dist. Col. Circuit, 1975).

"Misuse of power and wrongdoer' were the terms used by the Supreme Court in Monroe v Pape See: Striker v Pancher, 317 F2d 780, 784 (Circuit 6, 1963) Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 456 F2d 1339, (Circuit 2, 1972). Agents acted in unconstitutional manner when they misued and abused their

power in which plaintiffs have option to file a federal civil suit against government overreaching.

II. There is a conflict between the decision of the United States Court of Appeals for the Ninth Circuit and the United States Court of Appeals for the Fifth Circuit on the case of Wright v. Florida, 495 F2d 1086 (Circuit 5, 1974) and the decision rendered in plaintiffs' case involving the same matter of wiretapping.

The cases are similar on the same matter of wiretapping as follows:

1. Dissemination of information gained from allegedly illegal wiretaps.
2. Injured reputation and loss of job (personal and economic injury)
3. District court dismissed complaint for failure to state a claim upon which relief could be granted.
4. Both cases were pro se.

There was a conflict between the Circuit Courts as follows:

Wright Case	Plaintiffs' Case
1. Lower Court Judge appointed cousel to amend the complaint.	Appointment of Counsel was denied
2. Court of Appeals held that Fourth Amendment claim for damages should not have been dismissed by District Court. District Court has jurisdiction to hear plaintiffs' claim based on statute authorizing civil action by any person whose wire or oral communication is illegally intercepted, disclosed, or used.	Court of Appeals affirmed District Courts' decision to dismiss.

Wright Case	Plaintiffs Case
Court of Appeals reversed and remanded to District Court.	

III. Since Statutes 18 USCA 2520 and 28 USCS 1343 (4) are intregal part of complaint, the District and the Court of Appeals could have invoked these statutes as in the following cases:

The court in Philadelphia Resistance v. Mitchell (DC Pa, 1972) 58 FRD 139 stated that plaintiffs who alleged illegal wiretapping and sustained direct injury and were in imminent danger of sustaining direct injury because the government had conducted excessive surveillance, " should have standing to invoke the remedy provisions of 18 USCS 2520. In reaching this conclusion, the court cited Gelbard v. United States,408 US 41, 33 L ED 2d 179, 92 S. Ct. 2357 (1972).

The plaintiffs'complaint and the plaintiffs' Finding of Fact alleges injury sustained and were in imminent danger of sustaining direct injury.

CONCLUSION

The relationship between the conspirators is very clear and obvious. One can clearly see:

1. That telephone tapping has been employed, certain conversations, and much information transmitted. Specifically, mentioned was the coversation that was relayed to a student at the University of Montana and the conversations that were relayed to families of plaintiffs.

2. That certain FBI agents of Billings, Montana have been employed to arrange setups and tap plaintiffs' phone by the defendants.

That local enforcement personnel, County attorney Hanser, and ex-sheriff

Shaffer are also involved in suppressing evidence and the illegal tapping of the plaintiffs' telephone.

That threats were made on the well being of plaintiff, Mike Atraqchi by ex-sheriff Shaffer if Atraqchi proceeded with a civil suit against defendants.

3. That defendant, Fargo, took it upon himself to monitor and investigate plaintiffs, Atraqchis' personal, religious, and business lives and then he took this information back to defendant McRae to motivate him religiously against the Atraqchis.

That Fargo took information to plaintiffs' families, friends, and associates directly and indirectly. The defendants distorted this information and maliciously spread it so that this would cut the ties to families and friends forever thus isolating the plaintiffs.

That defendant, Fargo, met with Atraqchis' daughters and nephew at Montana State University in Bozeman, Montana (120 miles away) after they became consentants to the telephone tapping.

4. That plaintiffs' daughter and nephew were coerced and induced to become informants (blackmailed) by defendant, Fargo.

5. That both daughters are prevented from communicating with their parents, the Atraqchis.

That the oldest daughter is prevented from continuing her education, despite the fact that she is an honor student, and left without a job after a masters' degree in bacteriology, to devote all her time to furtherance the aim of conspirators by force applied by defendants, specifically, defendant, Fargo.

That youngest daughter has had a very difficult life since defendants have

taken her away from her home and away from college. Defendants have made her very poor, abused and used her sexually. Defendants have isolated her against her will from her family and friends for long periods of time, and they have complete control over her mind.

6. The fact that defendant Wiesner tried to recruit Atraqchi to join the conspiracy as far back as 1967.

7. That defendants, Fargo, McRae, and Wiesner are all instructors at Eastern Montana College.

As a consequence of this illegal wiretapping, the plaintiffs lost all their freedom. They sustained direct injury and are in imminent danger of losing their property (home) for taxes. Defendants are destroying plaintiffs' property by vandalism and malicious mischief. Then plaintiffs are prevented from obtaining any compensation by the Insurance Com-

panies by the order of the defendants to cause them economical destruction and consequently to force them to join and be used to induce others to join by means of blackmail (sex crimes) wiretapping, isolation, and deprivation of their rights. Plaintiffs are prevented from earning a living to sustain themselves, thus their income became meager.

Since plaintiffs have been isolated, plaintiffs have no way to know and to state specifically all the facts until a discovery period has been allowed to show who did what, when, and where with certainly.

It is definite proof from the above that a criminal conspiracy is in existance using sexual inducement to blackmail and control members of plaintiffs families. Defendants are using genocide on the plaintiffs' families, and the U.S. government (FBI) is terrorizing its

citizens (plaintiffs) by threatening, blackmailing, intimidating on a daily basis.

While the defendants were safe and secure in their homes, the plaintiffs suffered injury beyond human endurance. It is not the physical, economical, and emotional suffering, but the suffering of the invasion of plaintiffs' privacy not only to the plaintiffs, but to their children and families.

No person must endure this upheaval! The freedom which is guaranteed to the plaintiffs by the Constitution has been violated by the defendants. As a consequence of the illegal wiretapping, all of plaintiffs freedom has been taken away by the defendants. The most fundamental right and the most valued right is the right to be left alone!

The plaintiffs have and now are enduring harassment, humiliation, embarrassment,

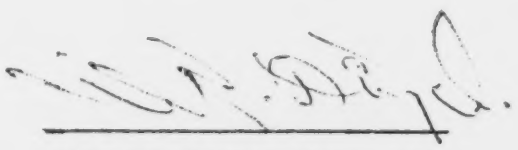
and loss of freedom by this certain group of individuals using the law and psychology to convert and use plaintiffs and their families sexually and economically to abuse others.

Therefore, plaintiffs pray to this Court to grant:

1. The order of the Court of Appeals should be reversed.

2. Immediate temporary injunction.

3. Appointment of counsel at expense of the plaintiffs to assist plaintiffs through remainder of this action so justice can be served.



Michael R. Atraqchi

Irene S. Atraqchi

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Billings, Montana

Pro se

CERTIFICATE OF SERVICE

I, Michael R. Atraqchi, and Irene S. Atraqchi certify that we mailed a true copy of this brief to all opposing counsels, Solicitor General, Federal Bureau of Investigation of record in this action by depositing a true copy of the same unto the United States mails with proper postage prepaid on this 1st day of August, 1986 from Billings, Montana.

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA

BILLINGS DIVISION

MAJID RASHEED (MICHAEL) ATRAQCHI and IRENE S. ATRAQCHI Plaintiffs, --vs-- FOUR UNKNOWN NAMED AGENTS OF THE FEDERAL BUREAU OF INVESTIGATION, et al, Defendants.	CV 84-256 BLG OPINION AND ORDER

On Friday, April 26, 1985, a hearing was held on plaintiffs' motion for a preliminary injunction. For reasons stated below, plaintiffs' motion is denied and their complaint is dismissed for failure to state a claim upon which relief can be granted.

FACTS AND CONTENTIONS

Plaintiffs have filed an action under

42 U.S.C. 1983 alleging conspiracy, illegal wiretapping and religious persecution. Plaintiffs contend that defendants (four unknown FDI agents, three professors at Eastern Montana College, the Yellowstone County Attorney, an ex-Yellowstone County Sheriff, the telephone company, and unknown students) have intercepted and transmitted oral communications through warrantless wiretapping of plaintiffs' residence and business phones for a period of not less than 13 years, [1] have sought to control the lives and associations of the plaintiffs' family, and have ruined plaintiffs' business reputation because plaintiff Majid Atraqchi is a Moslem. The complaint is

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[1]Plaintiffs' Exhibit 14 contains letters from Mountain Bell Telephone Co. informing plaintiffs that the phone company was unable to identify any "bugging" devices whatsoever.

styled in 74 paragraphs which, for the most part, identify defendants in a collective sense. When specific persons are mentioned, they are most often individuals who have not been named as defendants.

Plaintiffs seek to enjoin defendants from conducting electronic surveillance and from using 'psychological harassment." They also seek an order from the Court granting plaintiffs full access to the Court and to legal representation.[2]

---

[2] Plaintiffs claim they have sought the help of many private attorneys but defendants' conspiracy has prevented attorneys from pursuing plaintiffs' claims.

Defendants oppose plaintiffs' motion for a preliminary injunction and they have filed various motions to dismiss the complaint and/or for a more defeinte statement.

DISCUSSION

Recognizing that pro se civil rights complaints must be viewed with some latitude, the Court must dismiss plaintiffs' complaint on several grounds. First, the complaint does not comply with Fed. R. Civ. P. 8 (3) which requires that averments be simple, concise and direct. Plaintiffs' 74- paragraph complaint, which defies legal analysis, is vague and conclusory. Plaintiffs' rambling allegations provide no facts which give fair notice to defendants of the claims asserted against them. Largely, plaintiffs' assertions do not identify specific defendants, and the occurrences identifying specific defendants do not provide a basis for

for plaintiffs' claims.

More fatal to plaintiffs' complaint is plaintiffs' failure to state a cause of action under either 42 U.S.C. 1983 or 1985.[3] Without addressing whether plaintiffs allege requisite action under color of state law as required by 1983[4] or whether

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[3]While plaintiffs do not rely on 42 U.S.C. 1985, they identify a vast conspiracy which allegedly caused Majid Atraqchi to lose his job as an insurance salesman, which affected their daughters' schooling and choice of mates, and which prevented the sale of both plaintiffs' house and business property. Section 1985(3) provides a remedy for the violation by private conspiracy of protected civil rights.

[4]Gomez v. Toledo, 446 U.S. 635, 640 (1980).

plaintiffs state a cause of action under 1985 (3) (more particularly whether plaintiffs are the victims of conspiratorial, racially discriminatory private action[5] and whether state involvement is necessary for an injury arising out of a purely private conspiracy to interfere with plaintiffs' First Amendment rights,[6]) a com-

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[5]Griffin v. Breckenridge, 403 U.S. 88 102 (1971).

[6]United Brotherhood of Carpenters & Joiners of America, Local 610, AFL-CLO, et al. v. Scott, _____U.S._____, 103 S. Ct. 3352, 3357 (1983).

plaint alleging a conspiracy under either 42 U.S.C. 1983 or 1985 must plead facts with specificity. More than vague conclusory allegations are required to state a claim. Mosher v. Saalfield, 589 F.2d 438, 441 (9th Cir. 1978), cert. denied 442 U.S. 941 (1979); Morpurgo v. Board of Higher Education in City of New York, 423 F Supp. 704, 713 (S.D. N.Y. 1976); Slotnick v. Staviskey, 560 F. 2d 31, 33 (1st Cir. 1977), cert. denied, 434 U.S. 1077 (1978). Thus, plaintiffs' complaint cannot survive defendants' motion to dismiss for failure to state a claim. Accordingly,

IT IS ORDERED that plaintiffs' motion for a preliminary injunction in the above-captioned case is denied.

IT IS FURTHER ORDERED that defendant's motion to dismiss the complaint is granted. The complaint is dismissed against all defendants for failure to state a claim upon

which relief can be granted.

The Clerk is directed forthwith to notify counsel for the respective parties of the making of this order.

Done and dated this 3rd day of May, 1985.

James F. Battin
Chief Judge

Filed with the Clerk of the Court May 3rd 1985.

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MONTANA - BILLINGS DIVISION

MAJID RASHEED (MICHAEL) ATRAQCHI and IRENE S. ATRAQCHI, Plaintiffs vs. FOUR UNKNOWN NAMED AGENTS OF THE FEDERAL BUREAU OF INVESTIGATION, et al. et al. Defendants.	CV 84-256 NOTICE OF APPEAL

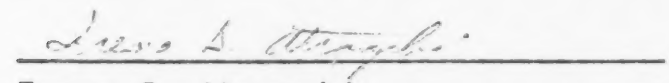
Come now Plaintiffs, Majid Rasheed (Michael) Atraqchi and Irene S. Atraqchi depose and says:

1. That in pursuant to the Rules of Federal Civil Procedure, plaintiffs hereby file notice of appeal of the Honorable James F. Battin, U.S. District Chief Judge, dated May 3, 1985, granting the above named defendants' motion and denying the plaintiffs motion for a preliminary injuction.

2. That in pursuant to Rule 75, Rules of

Federal Civil Procedure, plaintiffs hereby request that the original papers, exhibits, transcripts of all proceedings, if any and a certified copy of the docket entries be transmitted to the Court of Appeals for the Ninth Circuit, with a copy served on the plaintiffs.

Majid Rasheed (Michael) Atraqchi



Irene S. Atraqchi

5420 Deadwood Drive
Billings, Montana 59105
Pro se

Filed with the Clerk of the Court on May 31, 1985.

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MAJID RASHEED (MICHAEL) ATRAQCHI AND IRENE S. ATRAQCHI, Plaintiffs-Appellants, v. FOUR UNKNOWN NAMED AGENTS OF THE FEDERAL BUREAU OF INVESTIGATION et al. Defendants-Appellees.	No.85-3914 DC No. CV 84-256 BLG ORDER

Before: KENNEDY, BOOCHEVER, AND WIGGINS, Circuit Judges

Appellants' various petitions, motions and requests filed with this court are denied.

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MAJID RASHEED (MICHAEL) ATRAQCHI AND IRENE S. ATRAQCHI Plaintiffs-Appellants, v. FOUR UNKNOWN NAMED AGENTS OF THE FEDERAL BUREAU OF INVESTIGATION et al. Defendants-Appellees.	No. 85-3914 DC No. 84-256 BLG MEMORANDUM*

Appeal from the United States District Court for the District of Montana - James F. Battin, District Judge,

Presiding Submitted February 26, 1986**

Before: KENNEDY, BOOCHEVER AND WIGGINS, Circuit Judges

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* This disposition is not appropriate for

publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 21.

** The panel unanimously finds this case suitable for decision without oral argument. Fed. R. App. P. 34 (a) and Ninth Circuit Rule 3 (f).

Plaintiffs-appellants pro se Majid Rasheed (Michael) Atraqchi and Irene S. Atraqchi seek reversal of the district court's orders denying their motion for a preliminary injunction and dismissing their complaint. We affirm the denial of the motion for a preliminary injunction. We dismiss the appeal from the order dismissing appellants' complaint.

Appellants' complaint, filed under 42 U.S.C. 1983, alleges constitutional deprivations caused by a conspiracy amoung defendants to tap appellants' phones, control the lives and associations of appellants'

family, brainwash the appellants, and persecute appellants for their religious beliefs. Twelve defendants are named in the complaint: four unknown FBI agents, three Eastern Montana College professors, the Yellowstone County Attorney, the ex-sheriff of Yellowstone County, Mountain Bell Telephone, Jane Doe, and John Doe. The complaint requests injunctive relief and damages.

The denial of a motion for a preliminary injunction is an appealable interlocutory decision under 28 USC 1292 (a) (1). Sudomir v. McMahon, 767 F2d 1456, 1457 n.1 (9th Cir. 1985). An order denying a motion for a preliminary injunction will be reversed only if the district court abused its discretion. Id. at 1458. A preliminary injunction properly issues upon a showing of either probable success on the merits and possible irreparable injury, or serious questions on the merits and a

balance of hardships tipping sharply in favor of the moving party. Goldie's Bookstore, Inc. v. Superior Court, 739 F 2d 466, 470 (9th Cir. 1984). These two tests are part of a single continuum. Id. Here, the record indicates that appellants made no showing under either of these test. Appellants' supporting papers and their testimony at the hearing for a preliminary injunction consist of vague, conclusory, and bizarre allegations of an unlikely conspiracy against them. No probability of success on the merits, or possibility of irreparable injury, may be inferred from this record. Similarly, this record does not raise serious questions on the merits or show that the hardships tip in appellants' favor. Absent a showing under these tests, denial of the motion for a preliminary injunction was legally mandated and did not constitute abuse of discretion.

An order dismissing a complaint but

not dismissing the action is not final and appealable, under 28 USC 1291, unless there are special circumstances which make it clear that the district court determined that the action could not be saved by any amendment of the complaint which the plaintiff could reasonably be expected to make. Ginter v. State Bar of Nevada, 625 F 2d 829 830 (9th Cir. 1980) (per curiam); Jackson v. Nelson, 405 F2d 872, 873 (9th Cir. 1968) (per curiam). Here, the district court's order of dismissal addresses only the complaint, not the underlying action. It is not a dismissal " with prejudice" or "without leave to amend."

The vague and rambling for of the complaint and the irrational and bizarre allegations made in the various pleadings to this court and the trial court convince us, however, that the action cannot be saved by any amendment of the complaint which the plaintiffs could reasonably be expected

to make. Moreover it is readily apparent from the trial court's Opinion and Order that it reached the same conclusion, although not expressed in so many words. We construe the court's Opinion and Order as a determination that the action cannot be saved by any amendment of the complaint which the plaintiffs could reasonably be expected to make.

Treating the trial Court's Order as a dismissal of the action, we affirm.

In our discretion we deny the defendants' request for attorney's fees.

The denial of the motion for preliminary injunction and the dismissal of the action is affirmed.

AFFIRMED.

Filed in the Clerk of the Court May 15, 1986.

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MAJID RASHEED (MICHAEL) ATRAQCHI, IRENE S. ATRAQCHI, Plaintiffs-Appellants, vs. FOUR UNKNOWN AGENTS OF THE FBI, et al., Defendants-Appellees.	No. 85-3914 DC CV 84-256 BLG ORDER

Before: ANDERSON and CANBY, Circuit Judges

Appellants' motion for appointment of counsel is denied. Appellants have failed to demonstrate exceptional circumstances warranting appointment of counsel. See UNITED STATES v. McOuade, 647 F2d 938, 940 (9th Cir. 1981) (per curiam), cert. denied 455 U.S. 958 (1982); cf. Ivev v. Board of Regents, 673 F 2d 266, 269 (9th Cir. 1982). Filed with the Clerk of the Court Dec 2, 1985.

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MAJID RASHEED (MICHAEL) ATRAQCHI and IRENE S. ATRAQCHI, Plaintiffs-Appellants, v. FOUR UNKNOWN NAMED AGENTS OF THE FBI, et al. Defendants-Appellees.	No. 85-3914 DC No. CV 84-256 BLG ORDER

Before: KENNEDY, BOOCHEVER and WIGGINS, Circuit Judges

Appellants' petition for a rehearing is denied.

Filed with the Clerk of the Court Jun 16 1986

IN THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MAJID RASHEED (MICHAEL) ATRAQCHI and IRENE S. ATRAQCHI Plaintiffs-appellants	DC 84-256 BLG CA 85 3914
FOUR UNKNOWN NAMED AGENTS OF THE FEDERAL BUREAU OF INVESTIGATION et al.,	NOTICE TO APPEAL TO SUPREME COURT

This is a notification of our intention to appeal the decision of this court in the above entitled case to the Supreme Court of the United States of America.

Majid Rasheed (Michael) Atraqchi

Irene S. Atraqchi

Mailed May 23rd, 1986 to Appeals Court

IN THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MAJID RASHEED (MICHAEL) ATRAQCHI and IRENE S. ATRAQCHI Plaintiff-appellants. vs. FOUR UNKNOWN NAMED AGENTS OF FBI et. al, Defendant-appellees	CA 85-3914 CV 84-256 BLG CORREC-TION

The plaintiff-appellants are pro se in the above entitled case. Upon receiving the judgement order of this court, they discovered that the Courts' jurisdiction rests and is invoked pursuant to Federal Statutory Title 18 USCA 2520; 28 USCA 1343 (4) Amend; 28 USCA 1331; instead of what was written in the original brief to this court on page 12.

This mistake was done either intentionally to mislead and deceive the plain-appellants or it was a clerical honest

mistake by the original typist.

Therefore, respectfully request a rehearing and since we are within the time limit prescribed by the rule of the Appellant Court for the Ninth Circuit, we submit this correction.

This correction is for consideration.

Majid Rasheed (Michael) Atraqchi

Irene S. Atraqchi
Pro se

Mailed May 30, 1986 to the U.S. Court of Appeals

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

December 13, 1985

The court letter to the plaintiffs informing that the case will be considered without oral argument.

By Phillip B. Winberry
Clerk of Court

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Constitution 1st Amendment

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.....

U.S. Constitution 14th Amendment

Section 1-No United States citizen should be deprived of life, liberty or property.....

Right to equal protection and due process of the law.....

42 USC 1983

Every person who, under color of any statute, ordinance, regulation, custom or usage, of any State or Territory, subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in

an action at law, suit in equity, or other proper proceeding for redress.

42 USC 1985

The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

(1) To recover damages for injury to his person or property, or because of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section 1985 of Title 42;

(2) To recover damages from any person who fails to prevent or to aid in preventing any wrongs mentioned in section 1985 of Title 42 which he had knowledge were about to occur and power to prevent;

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right,

privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;

(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote.

86-249

AUG 4 1986
JOSEPH F. SPANIOL, JR.
CLERK

No.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1986

MICHAEL R. AND IRENE S. ATRAQCHI

Petitioners,

v.

FOUR UNKNOWN NAMED AGENTS OF THE FEDERAL BUREAU OF INVESTIGATION, et al.

Respondents,

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

APPENDIX

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29pp

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IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MONTANA -BILLINGS DIVISION

MAJIF RASHEED (MICHAEL) ATRAQCHI and IRENE S. ATRAQCHI,

Plaintiffs,

vs.

FOUR UNKNOWN NAMED AGENTS OF THE FBI et, al.

Defendants,

CV 84 - 256BLG

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

On this 26th day of April, 1985, a hearing on plaintiffs Motion for Notice of Motion For Hearing on Preliminary Injunction Pertaining to Wiretapping Electronical Surveillance, Psychological Manipulation, Freedom to Obtain Legal Counsel, and Conspiracy was heard by the Honorable Judge James F. Battin. Plaintiffs appearing without counsel and defendants appeared

with counsel. Testimony and evidence was taken from witnesses. This court based on the testimony and evidence heard makes the following:

FINDINGS OF FACT

1. Plaintiffs are not represented by counsel due to the fact that the plaintiffs are unable to obtain a legal counsel. Defendants and others in the conspiracy exerted extreme influence on the attorneys contacted.

2. Plaintiffs believe Insurance Company (plaintiffs' business) phone and home phone were wiretapped with results clients were discouraged from purchasing insurance from plaintiff, Mike Atraqchi's Agency. As a result there was a loss of employment from all Insurance Companies, and Insurance income dropped.

3. Plaintiffs believed their business and home phones were wiretapped. As a result, plaintiffs had to start using pay tele-

phones since 1980. Plaintiffs believe defendants used telephone equipment to pickup conversations in the house. As a result plaintiffs had both telephones removed.

4. A building was built for a restaurant at 655 Main. Plaintiffs have been unable to open it for three years due to harassment and threats. Also plaintiffs need a telephone to operate a business. Plaintiffs have severed interest plus business income.

5. Plaintiffs have put property for sale several times and tried to leave the area. Plaintiffs believe defendants interferred in the sale of their property.

6. Plaintiffs have been harassed and threatened while taking classes at Eastern Montana College. Although Irene Atraqchi had only 1½ quarters left to obtain a degree, she dropped because of harassment from the students and staff. Plaintiffs believe defendants used students to ha-

rass plaintiff, Irene Atraqchi.

7. Plaintiffs believe Brenda Atraqchi was psychologically kidnapped and married to Leonard Lemke who was involved in the conspiracy to destroy her parents, the plaintiffs. A letter from his brother in prison was received ordering and indirectly threatening plaintiffs to help Brenda Atraqchi and Leonard Lemke.

8. Plaintiffs believe that Deborah Atrachi was psyched against her family by Dan Ariola through defendants. He mentioned in his letter to her about the IRS. Plaintiffs later were harassed by the IRS.

9. Plaintiffs believe that during 1984 defendants had IRS harass plaintiffs to scare them so that they wouldn't file a suit. Plaintiffs were harassed by the IRS everytime they mentioned filing the Federal Civil suit.

10. Plaintiffs believe there is a conspiracy to forcefully take their properties

and assets through unjust means. Plaintiffs have been threatened that their property will be taken.

11. Plaintiffs believe defendants had plaintiff, Majid Atraqchi, harassed while he travelled in Europe in 1973. Plaintiff had made plans to further his education.

12. Plaintiff, Majid Atraqchi, believe that his civil rights were violated due to his religion. Due to severe harassment flat tires, broken head lights, telephone harassment, etc., Majid Atraqchi seeked help from the FBI in June of 1978. A copy of that report was obtained through the Freedom of Information Act. (However, there are discrepancies on this report) in August of 1981. In August of 1981 plaintiffs seeked the help of the FBI in Washington D.C. per certified letter dated August 5, 1981. However, plaintiffs didn't receive any answer.

13. Plaintiffs believe that defendants had them harassed while travelling in Seattle, Wash., California, and North Dakota to the limit where plaintiffs slept in the car. They were also harassed in Hawaii including telephone harassment.

14. Plaintiffs believe that defendants have prevented them from furthering their education as well as the education of Brenda, their daughter, and limiting the education of their other daughter, Deborah.

15. Plaintiffs believe that defendants have isolated their daughters from their friends of the past to keep them psyched, controlled, and isolated.

16. Plaintiffs believe that defendants have chosen mates for their daughters through psychological manipulation.

17. Plaintiffs believe that defendants have prevented plaintiff, Majid Atraqchi from seeing and contacting his family, nephews, brothers and sisters in this

Country and in Iraq.

17. Plaintiffs believe that defendants have had plaintiffs harassed in all aspects of the plaintiff's life, for example in Billings, in their business, prevented from opening their restaurant, fired from Insurance Companies, and prevented from having a telephone.

18. Plaintiffs believe that defendants have prevented plaintiff, Irene from seeing and talking to her sisters which limits her from seeing her parents.

19. Plaintiffs believe that defendants have indirectly threatened them with cancellation of insurance and driving license.

20. Plaintiffs believe that defendants forcing the plaintiffs to join a conspiracy that they want no part.

21. Plaintiffs believe that defendants have bugged their house to the limit where they are actually writing notes not even whispering.

22. Plaintiffs believe that defendants have involved the entire community or any person that plaintiffs come in contact such as friends, acquaintance were put on a community telephone, where they either gave information or received information and instructions, from grocery stores to business places in the Billings area.

23. Plaintiffs believe the entire family has been studied through the wiretapping by psychologist, psychiatrists and others for the sole purpose of destruction or join the conspiracy.

24. The plaintiffs believe the conspiracy itself is illegal one and one which involves illegal telephone tapping of others for the sole purpose to gain access to the Middle East since missionaries are not allowed into these countries.

25. Plaintiffs believe the conspirators are using foreign students, and immigrants from the Middle East and turn them against

one other, incriminating, them and thereby the defendants are controlling their life and their future. Conspirators could turn them against any person that they deem a danger to them with disregard to life, properties, and the law of the land.

26. Plaintiffs believe that the defendants have plaintiffs harassed to induce them to join the conspiracy. Plaintiffs believe that the trouble will start upon joining the conspiracy, and that the conspirators will use the plaintiffs whereby they will be a tool for the conspirators aims and self destruction will follow.

27. Plaintiffs believe that their daughter Deborah, does whatever the defendants tell her to do. Plaintiffs believe that defendents have used Deborah to destroy relationships with both of the plaintiffs' families and friends.

28. Plaintiffs were told by Geney Dilley, Leonard Dahl and Mohammed D. Mohammed to

go to church.

29. Plaintiffs believe that defendant, Mumtaz Fargo, is using wiretapping as a revenge method.

30. Plaintiffs believe that defendants are using inhumane methods on both families of the plaintiffs by using methods such as fear, rage, threats, and etc. (Also blackmail).

31. Plaintiffs believe that their daughter, Brenda, who is a dyslexic has been treated badly. She has been harassed, isolated from her friends and family, forced to leave Billings against her will in August, put into difficult living circumstances economically and emotionally, since she was taken from the plaintiffs.

32. Plaintiffs believe that defendants are destroying plaintiffs' daughters to punish their father, because he was born a Moslem.

33. Plaintiffs believe that it is inhumane

to agonize Irene Atraqchi's aging parents by having their daughters separated from them by psychological means.

34. Plaintiffs believe that defendants want to setup and incriminate the plaintiff Mike Atraqchi so that he will join the Conspiracy by force or to make him crazy.

35. Plaintiffs believe that defendants tried to setup Mike Atraqchi in 1978 for assault and battery. (#13 of Complaint)

36. Plaintiffs believe that defendants are isolating plaintiffs nephew, Kevin Carter who is a minor. He has been harassed since the 8th grade.

37. Plaintiffs have reason to believe that certain Christain denominations are using psychology and the law to convert Moslems to Christianity.

38. Plaintiffs have reason to believe that there is a mail cover on the plaintiffs' mail.

39. Plaintiffs have reason to believe that

plaintiffs two daughters and nephews are held as hostages whereby the plaintiff could be blackmailed to join the conspiracy.

CONCLUSIONS OF LAW

1. Court has jurisdiction to hear this case.

2. There is a basis to believe plaintiffs have been religiously harassed through wiretapping.

3. There is a basis to believe plaintiffs have suffered economic injury.

4. There is a basis to believe plaintiffs have suffered emotional and physical injury due to psychological kidnapping of their daughter, Brenda,and consequently to marry a man involved in the conspiracy to destroy her family by psychological means.

5. There is a basis to believe that plaintiffs were deprived of association.

6. There is a basis to believe that plaintiffs were subject to unreasonable

search of their home, effects, things, and persons without warrant, reason, or cause.

7. There is a basis to believe that plaintiffs were deprived from life, liberty and pursuit of happiness.

8. There is basis to believe a misuse and excessive power was used on the plaintiffs and their families by the federal government.

9. There is basis to believe that the silence on the part of the defendants is tantamount to a force of guilt.

ORDER

1. That all defendants be enjoined from wiretapping the residence and any business of plaintiffs.

2. That all defendants stop all psychological manipulation and pressure on both of plaintiffs' entire families here and abroad including their two daughters.

3. That all defendants stop all psycho-

logical manipulation on all people who the plaintiffs come in contact with as well as tenants or business associates.

4. That plaintiffs and their two daughters be protected from any psychological manipulation of any kind, form or shape caused by the defendants.

5. That plaintiffs have freedom to sell property without any interference.

6. That defendants stop all interference through psychology enabling plaintiffs to seek legal help in order that they may proceed with the discovery period without any harassment of whatsoever nature.

7. Tha plaintiffs receive all mail without any mail tampering.

8. That plaintiffs' freedom is restored which is guaranteed under the Constitution of the United States.

9. That defendants stop the interference with plaintiffs' business, education, and

association.

10. That plaintiffs have freedom to travel without surveillance or interference.

11. That defendants stop all electronical surveillance, people surveillance, and wiretapping.

12. That defendants stop defaming the plaintiffs' characters and stop circulating tapes and that defendants stop using other parties (co-conspirators) to do this.

13. That plaintiffs be allowed to sell Insurance Companies comparable to his orignal Companies.

James F. Battin
Chief Justice, District of Montana

Note: Exhibits (Letters, reports, tape, and pictures) of facts were submitted that are vital to the case at the Preliminary Hearing; and it was recorded in the Court transcript. All of these records were transferred to Court of Appeals. We have no way to obtain at this time. The Supreme Court on its own discretion could obtain these records.

Again, the plaintiffs in the above entitled caseare pro se and requested appointment of counsel to assist with remainder of this action at plaintiffs own expense so justice could be done.

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MONTANA - BILLINGS DIVISION

MAJID RASHEED (MICHAEL) ATRAQCHI AND IRENE S. ATRAQCHI Plaintiffs vs. FOUR UNKNOWN NAMED AGENTS OF FBI et al. Defendants	CV 84-256 PLAINTIFFS' RESPONSIVE REPLY TO MOUNTAIN BELL'S MOTION FOR MORE DEFINITE STATEMENT

Plaintiffs' responsive reply to Mountain Bell's Motion to Dismiss is based on the following grounds:

1. Complaint is intelligible, informative, concise, and direct.

2. The motion For More Definite Statement is disfavored, since it is solely being used for delay, in violation of man-

date found in Rule 1 of Federal Rules of Civil Procedure. Plaintiffs respectfully request the Court to overrule this motion. Said opposition is based on the following:

All the defendants have ignored the subject of wiretapping. Paragraph 2 and 15 include Mountain Bell as a defendant, and it is very clear that these paragraphs indicate interception and transmission of oral communications through wiretapping. Paragraph 2 specifically indicates a conspiracy of telephone tapping as in the following cases: Berger v New York, 388 US 41, 1967; Katz v. US. 389 US 347 (1967); Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics 403 US 388 (1971); Wright v. Florida 495 F2d 1086 (5th Cir., 1974); Abramson v. Mitchell 459 F2d 955 (8th Cir., 1972). Wiretapping is a violation of plaintiffs' Fourth Amendment. A cause of action can be implied under the Fourth Amendment with jurisdiction based

upon the federal question statute, 28 USCS 1331. As in the Wright v. Florida 495 F2d 1086 (5th Cir., 1974) case it was held that the right to be free from unauthorized wiretapping, being one aspect of the right to be free from unreasonable searches and seizures, is a civil right, within the purview of 28 USCS 1343 (4), and that the District Court has jurisdiction to hear plaintiff's claim under 18 USCS 2520 (Chapter 119).

As a result of the wiretapping, plaintiffs received injury. The plaintiffs experienced a violation of their civil rights in the following economic injuries: lost profits, lost opportunity to engage in a business enterprise, restriction of one's ability to dispose of one's property or utilize to the fullest of one's ability as in the following cases: Association of Date Processing Service Organizations, Inc. v. Camp, 397 US 150,; Arlington Heights v.

Metropoliton Housing Development Corp., 429 US 252, and Andrus v Allard, 444 US 51.

As a result of the wiretapping, plaintiffs also received personal injury which was in violation of plaintiffs' civil rights. The injuries are as follows: disintegration of family; loss of one's freedom to speak; loss of one's freedom to religion; loss of freedom from search and seizure (excessive electronic surveillance); loss of the right to be represented by legal counsel; loss of freedom to be secure in persons, house, papers, and effects; loss of freedom in pursuit of life, liberty, and property.

The degree of the participation by each defendant is unknown until the records of the Telephone Company are obtained, and then the true facts will show. The validity of the defense is not determined conclusively by the pleadings, and plaintiffs should have the opportunity to prove their

case as in the following cases: Abramson v. Mitchell, 459 F2d 955, (8th Circuit, 1972) and Wright v. Florida, 495 F2d 1086, (5th Cir., 1974).

Federal Rules of Civil Procedure do not require claimant's complaint to set out in detail facts upon which plaintiff bases his claim; all that is required is a plain statement of claim that will give defendant fair notice of what plaintiff's claim is and grounds upon which it rest, as in Conley v. Gibson, 355 US 41 (1957).

Law in general has never been that plaintiffs' action must fail because, when he begins his suit, he does not know enough about his cause of action to establish it forthwith by competent evidence, nor, having pleaded cause of action, was plaintiff ordinarily denied right to amend by application, or by adding specific instances, coming within ambit of cause of action which he may

have set forth in his complaint as in the case of Bowles v Pure Oil Co 5 FRD 300 (1946).

Court has forceful argument for elimination of Rule 12 (e) since this motion is often used solely for delaying case as in Blane v. Losh 10FRD 273 (1950).

CERTIFICATE OF MAILING

We, Majid Rasheed (Michael) Atraqchi and Irene S. Atraqchi, (Pro se), do hereby certify that on the 29th day of January, 1985 we served a copy of the foregoing instrument by mailing a true and correct copy thereof first class postage prepaid to:

David Hoefer, Deputy County Attorney
Yellowstone County Courthouse
Billings, Montana 59101
Dennis Lopach, MT States T & T
P.O. Box 1716
Helena, Montana 59624

Laurence Weinberg, Assistant Chief Counsel

Montana University System

33 South Last Chance Gulch

Helena, Montana 59620-2602

James E. Seykora

Assistant U.S. Attorney

P.O. Box 1478

Billings, Montana 59103

Majid Rasheed (Michael) Atraqchi

Irene S. Atraqchi

Republic National Life Insurance Co.
3988 North Central Expressway
Dallas, Texas 75204

March 7, 1984

Mike R. Atraqchi
645 Main
Billings, Montana 59105

Dear Mr. Atraqchi:

Re: Cancellation of your General Agent's Contract effective: 3-22-84

Due to the fact that your production is below the mimimum required to maintain a General Agent's contract, your contract will be cancelled on the above date.

Please return all Company supplies to the Company Superintendent representing your area.

We are glad to have had the association with you, and if we can be of service to you in the future, please let us know.

Sincerely yours,

Jack Longrear

Vice-President

cc: William D. Shaw, CLU

Note: This letter submitted as one of the letters in Exhibit # 2 to the Court.

EXHIBITS SUBMITTED TO THE COURT

A. Letters of lawyers, Copies of checks (Lawyers contacted)

A-1 Pages from Fargo's Thesis

B- Loss of Insurance Companies that plaintiff represented-letters and list of income loss

C Final Bill showing plaintiffs telephones removed. Letters of customers trying to reach plaintiffs.

D Pictures of Building for restaurant

E Tried to Sell Property and Leave Area Real Estate Magazine and contracts

F Copy of form showing withdrawal from Eastern Montana College by Irene Atraqchi.

G Dale Smiths letter from federal penitentiary indirectly threatening plaintiffs to support his brother.

H Letter of Dan Ariola turning plaintiffs' daughter against her father.

I. IRS Correspondence

J. FBI Report dated June, 1978 reporting

harassment.

K- Harassment- Mispelling of Name

L- Harassment- Copy of letters on house and car insurance- cancellation

M- Confidential Letter from Nephew showing harassment to him and a form of inducing.

N Mountain Bell Correspondence about Plaintiffs telephone being tapped.

O Tape of Hensley, from Police Detective Division showing setup for assault and Battery trying incriminate plaintiff, Atraqchi, investigation was suppressed.

IMPORTANT- The above exhibits substantiate the facts given in the plaintiffs' complaint.